summon assistance. For instance, if the driver of a delivery wagon is injured in a collision, there would be no duty of relief, for the service is not of a kind that gives the master any special or exclusive control over the situation. And this would be true, even in the fortuitous circumstances that the master was present at the scene.[14] On the other hand, if a domestic servant is helplessly injured in the pursuance of a service presumably beneficial to the master, his isolation inherent in the work compels him to depend upon that protection which the master has the peculiar means to afford.[15]

With these elements, it is submitted, the law should impose a relational duty. Although particular cases have sometimes been covered by statute,[16] there is room for a wise application and development of common-law principles in respect to the obligations which are cast upon the employer by this voluntarily assumed relation.

EFFECT OF AN UNACCEPTED PARDON UPON THE PRIVILEGE AGAINST SELF-INCRIMINATION. — The highwater mark of protection accorded the privilege against self-incrimination, supposedly reached by the dissent in *Brown* v. *Walker*,[1] has perhaps been exceeded in the recent case of *Burdick* v. *United States*, 236 U. S. 79, 35 Sup. Ct. 267.[2] In a unanimous decision the Supreme Court held that a witness does not lose his privilege against self-incrimination by being tendered an unconditional pardon which he refused to accept. This result was attained upon the grounds that the validity of a pardon depends upon acceptance;[3] that the witness is consequently not technically free from danger of punishment, although he had the means at hand to remove the danger; that he cannot be made to forego his right to refuse the pardon and avoid possible disgrace; and so his privilege still exists.

If the privilege against incrimination is removed, it may well be that the witness will be indirectly forced to accept the pardon. Inasmuch as it is revocable until accepted, if his evidence would disclose a strong case against him, he cannot safely trust to the future good will of the government, but must accept at once. But it is by no means certain that it is illegal to force the acceptance of a pardon. Clearly an accused has no right to demand prosecution, for a *nolle prosequi* may issue without

[14] The moral duty would be strong, but there is nothing in the nature of the relation which could give rise to a legal duty.

[15] The duty not being predicated upon any liability of the master for the initial injury, it matters not whether that injury came from the negligence of a fellow servant, from an "assumed" risk, or was partly due to contributory negligence.

[16] For example, a number of states require medical assistance to be provided for employees injured in mines. See LABATT, MASTER AND SERVANT, § 1890. In South Carolina, a railroad is required to give immediate notice to a physician "most accessible to the place of accident." CIVIL CODE, 1912, § 3228. And it may be remarked that in states where an employer under the Workmen's Compensation Acts must indemnify his employees for all injuries "arising out of and in the course of the employment," prompt and effective steps are apt to be taken to prevent an enhancement of liability.

[1] 161 U. S. 591, 610.

[2] For a statement of the case, see RECENT CASES, p. 642.

[3] United States *v.* Wilson, 7 Pet. (U. S.) 150.

his consent.[4] Nor can he insist upon punishment after conviction when the state expresses the contrary desire.[5] So the only objection to enforcing the acceptance of a pardon must be the implication of guilt on the acceptor. A pardon is an "act of grace," [6] issuing at any time after the alleged criminal act has been committed.[7] Perhaps it is true, as it is often said, that since it does not issue on the assumption of innocence, there is an implication of guilt in its acceptance.[8] But certainly an involuntary acceptance will connote no such disgrace any more than do the immunity statutes, which are held constitutional.[9] While for the purposes of showing that the time of acceptance determines when a pardon becomes effective and irrevocable, it may be permissible to draw an analogy to a grant or deed,[10] this analogy should not be carried to the illogical extent of losing sight of the true nature of a pardon in holding that its acceptance must be left to the will of the accused. So the objection that a denial of the privilege against incrimination might possibly indirectly thrust a pardon upon the witness is without weight.

In placing so much stress upon the nature of a pardon, there is danger of losing sight of the true character and purpose of the privilege. The privilege against self-incrimination cuts into the general rule, that the state is entitled to the testimony of all its citizens, to the extent necessary to protect the witness from being compelled to bring about his own punishment.[11] This privilege does not extend to protection from shame and disgrace that the disclosure of his participation in crime may bring. For example, the privilege is gone, when the Statute of Limitations has run against the crimes his testimony may reveal.[12] Likewise an accepted pardon removes the privilege.[13] And the statutes requiring testimony by giving immunity have been held constitutional, for by removing the reason for the privilege, it is destroyed.[14] If the witness in the principal case is still open to dangers from prosecution, it is because of his own free will in declining the protection offered by the pardon provided that

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[4] The so-called right of a criminal to a trial and verdict has reference merely to the question whether a later prosecution, after a *nolle prosequi* of the former without his consent, places him twice in jeopardy. See United States *v.* Shoemaker, 27 Fed. Cas., No. 16,279, at p. 1069, 2 McLean (U. S.) 114, 119.

[5] "If the King pardons a felon, and it is shown to the court; and yet the felon pleads not guilty, and waives the pardon, he shall not be hanged; for it is the King's will that he shall not; and the King has an interest in the life of his subject." Jenk. 139, Case LXII.

[6] Marshall, C. J., in United States *v.* Wilson, *supra*, 160.

[7] This point was not passed upon in the principal case, but see in the lower court, United States *v.* Burdick, 211 Fed. 492, 493; *Ex parte* Garland, 4 Wall. (U. S.) 333, 380.

[8] See Cook *v.* Middlesex Co., 26 N. J. L. 326, 331; Manlove *v.* State, 153 Ind. 80, 53 N. E. 385.

[9] Brown *v.* Walker, *supra*.

[10] See United States *v.* Wilson, *supra; In re* Nevitt, 117 Fed. 448, 460.

[11] The privilege has been given undue emphasis by its incorporation into the federal Constitution and the constitutions of all but two of the states, but this does not change its purpose as a rule of evidence. See Professor Wigmore in 5 HARV. L. REV. 71; 15 *ibid.* 610; WIGMORE, EVIDENCE, §§ 2250, 2251. See Twining *v.* New Jersey, 211 U. S. 78, 102.

[12] Mahanke *v.* Cleland, 76 Ia. 401, 41 N. W. 53. See 5 HARV. L. REV. 24, 27.

[13] Queen *v.* Boyes, 1 B. & S. 311.

[14] Brown *v.* Walker, *supra*. See Hale *v.* Henkel, 201 U. S. 43.

it is still held open.[15] The reason for refusing the pardon may be the fear of incurring possible disgrace.[16] But even though receiving the pardon throws upon the witness a double disgrace arising not only from the testimony he may give, but also from the acceptance of the pardon, a mere increase in the amount of shame can hardly operate to change the scope and character of the rule.

The force of the argument of the Supreme Court that, — "In this as in other conflicts between personal rights and the powers of government, technical, — even nice, — distinctions are proper to be regarded," [17] is greatly diminished when balanced against the contention of Judge Hand in the lower court that, — "Legal institutions are built on human needs and are not merely arenas for the exercise of scholastic ingenuity." [18] And, it is submitted, even the technical reasoning of the Supreme Court breaks down when considered in the light of the true basis for the privilege against self-incrimination.[19]

JURISDICTION OF EQUITY TO INTERFERE WITH INTERNAL MANAGEMENT OF FOREIGN CORPORATIONS. — The recent case of *Tolbert* v. *Modern Woodmen of America*, 145 Pac. 183 (Wash.),[1] brings up the much disputed question as to how far, if at all, a court of equity will interfere in the internal management of a foreign corporation. A foreign mutual life insurance company threatened to cancel the plaintiff's certificate of membership. In a suit against the corporation to enjoin such action, process was served on the local agent authorized to receive service. Relief was refused on the ground, often asserted,[2] that equity has no jurisdiction to entertain a suit requiring interference with the internal management of a foreign corporation.

Since a corporation exists only by the legislative fiat of the sovereign creating it, its existence must be limited to the territorial jurisdiction of that sovereign.[3] In other words, the foreign corporation is not and never has been actually present before the court in which suit is brought.[4]

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[15] So a writ of *habeas corpus* was refused a prisoner who had rejected an unconditional pardon, because it was his own voluntary act that kept him confined. *In re* Callicot, 8 Blatch. 89, 95.

[16] If in truth the acceptance is forced upon the witness, then, as has been submitted, no disgrace would ensue.

[17] Justice McKenna in the principal case, p. 94.

[18] United States *v.* Burdick, *supra*, p. 494.

[19] "When, however, the question is of privilege, the witness only needs protection and he is protected when the means of safety lies at hand." Judge Hand in United States *v.* Burdick, *supra*, p. 494.

[1] For a statement of the case, see p. 634 of this issue of the REVIEW.

[2] See Wilkins *v.* Thorne, 60 Md. 253; North State Gold & Copper Mining Co. *v.* Field, 64 Md. 151, 20 Atl. 1039; Kansas, etc. Construction Co. *v.* Topeka, S. & W. R. Co., 135 Mass. 34; BEALE, FOREIGN CORPORATIONS, § 300. The mere fact that the management of a foreign corporation is involved seems to be taken as conclusive against the jurisdiction of the court. See Taylor *v.* Mutual Reserve Fund Life Ass'n, 97 Va. 60, 33 S. E. 385.

[3] See Bank of Augusta *v.* Earle, 13 Pet. (U. S.) 519, 588; Paul *v.* Virginia, 8 Wall. (U. S.) 168, 181; R. Co. *v.* Koontz, 104 U. S. 5.

[4] See Smith *v.* Mutual Life Insurance Co., 14 Allen (Mass.) 36; Matter of Rappleye, 43 N. Y. App. Div. 84, 59 N. Y. Supp. 338.